



December 3, 1999

Mr. Richard S. Rafes, J.D., Ph. D.
Vice Chancellor and General Counsel
University of North Texas
Health Science Center at Forth Worth
P. O. Box 310907
Denton, Texas 76203-0907

OR99-3477

Dear Mr. Rafes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130407.

The University of North Texas ("UNT") received a request for information related to video tapes removed from the office of a UNT faculty member. You claim that the requested information is excepted from disclosure under sections 552.026, 552.103, and 552.108 of the Government Code. Some of this material relates to an investigation into alleged crimes by the UNT police department. We have considered the exceptions you claim and reviewed the submitted information.

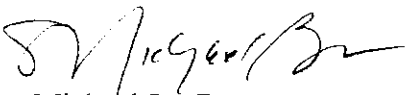
Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Further, to be excepted under section 552.103, the information must relate to litigation that is pending or reasonably anticipated on the date that the information was requested. Gov't Code § 552.103(c).

To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture; the mere chance of litigation will not establish the litigation exception. Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* This office has concluded that litigation was reasonably anticipated when the following facts have been alleged or shown:

the potential adversary filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); the potential adversary hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); the governmental body received a claim letter that it represents to this office to be in compliance with notice requirements of Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance, *see* Open Records Decision No. 288 (1981) and Open Records Decision No. 638 (1996). In this case, you rely on a letter from an attorney representing the requestor who states that failure to return the subject video tapes "will result in immediate legal action." Based on the assertions of counsel for the requestor and our review of the submitted information, we conclude that you have demonstrated that litigation related to the requested information was reasonably anticipated at the time of the request for the information. Responsive information may therefore be withheld under section 552.103(a) of the Government Code. However, the litigation exception does not except all of the subject information from disclosure. Even where litigation is reasonably anticipated, basic factual information about a crime must be released. Open Records Decision No. 362 (1983). Information normally found on the front page of an offense report is generally considered public, and must be released *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex Civ. App.- Houston [14th Dist. 1975, writ ref'd n.r.e.); *see* Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, including a detailed description of the offense and arrest, even if this information is not actually located on the front page of the offense report. The remaining information may be withheld under section 552.103(a) of the Government Code.

As this request is resolved under section 552.103 of the government code, we do not address your arguments raised under other sections other than to note that "basic" information about a crime is not excepted from disclosure by any of those provisions. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns", with a stylized flourish at the end.

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 130407

Encl. Submitted documents

cc: Mr. Francis Terrell
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(w/o enclosures)